

[DISCUSSION DRAFT]

1 **TITLE II—RENEWABLE ENERGY**

2 **Subtitle A—General Provisions**

3 **SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RE-** 4 **SOURCES.**

5 (a) RESOURCE ASSESSMENT.—Not later than 6
6 months after the date of enactment of this Act, and each
7 year thereafter, the Secretary of Energy shall review the
8 available assessments of renewable energy resources with-
9 in the United States, including solar, wind, biomass, ocean
10 (tidal, wave, current, and thermal), geothermal, and hy-
11 droelectric energy resources, and undertake new assess-
12 ments as necessary, taking into account changes in market
13 conditions, available technologies, and other relevant fac-
14 tors.

15 (b) CONTENTS OF REPORTS.—Not later than 1 year
16 after the date of enactment of this Act, and each year
17 thereafter, the Secretary shall publish a report based on
18 the assessment under subsection (a). The report shall
19 contain—

20 (1) a detailed inventory describing the available
21 amount and characteristics of the renewable energy
22 resources; and

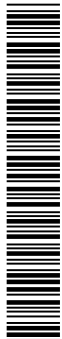


1 (2) such other information as the Secretary be-
2 lieves would be useful in developing such renewable
3 energy resources, including descriptions of sur-
4 rounding terrain, population and load centers, near-
5 by energy infrastructure, location of energy and
6 water resources, and available estimates of the costs
7 needed to develop each resource, together with an
8 identification of any barriers to providing adequate
9 transmission for remote sources of renewable energy
10 resources to current and emerging markets, rec-
11 ommendations for removing or addressing such bar-
12 riers, and ways to provide access to the grid that do
13 not unfairly disadvantage renewable or other energy
14 producers.

15 (c) **AUTHORIZATION OF APPROPRIATIONS.**—For the
16 purposes of this section, there are authorized to be appro-
17 priated to the Secretary of Energy \$10,000,000 for each
18 of fiscal years 2006 through 2010.

19 **SEC. 202. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

20 (a) **INCENTIVE PAYMENTS.**—Section 1212(a) of the
21 Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is
22 amended by striking “and which satisfies” and all that
23 follows through “Secretary shall establish.” and inserting
24 “ . If there are insufficient appropriations to make full pay-
25 ments for electric production from all qualified renewable



1 energy facilities in any given year, the Secretary shall as-
2 sign 60 percent of appropriated funds for that year to fa-
3 cilities that use solar, wind, geothermal, or closed-loop
4 (dedicated energy crops) biomass technologies to generate
5 electricity, and assign the remaining 40 percent to other
6 projects. The Secretary may, after transmitting to Con-
7 gress an explanation of the reasons therefor, alter the per-
8 centage requirements of the preceding sentence.”.

9 (b) QUALIFIED RENEWABLE ENERGY FACILITY.—
10 Section 1212(b) of the Energy Policy Act of 1992 (42
11 U.S.C. 13317(b)) is amended—

12 (1) by striking “a State or any political” and
13 all that follows through “nonprofit electrical cooper-
14 ative” and inserting “a not-for-profit electric cooper-
15 ative, a public utility described in section 115 of the
16 Internal Revenue Code of 1986, a State, Common-
17 wealth, territory, or possession of the United States
18 or the District of Columbia, or a political subdivision
19 thereof, or an Indian tribal government or subdivi-
20 sion thereof,”; and

21 (2) by inserting “landfill gas,” after “wind, bio-
22 mass,”.

23 (c) ELIGIBILITY WINDOW.—Section 1212(c) of the
24 Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is
25 amended by striking “during the 10-fiscal year period be-



1 ginning with the first full fiscal year occurring after the
2 enactment of this section” and inserting “after October
3 1, 2005, and before October 1, 2015”.

4 (d) AMOUNT OF PAYMENT.—Section 1212(e)(1) of
5 the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1))
6 is amended by inserting “landfill gas,” after “wind, bio-
7 mass,”.

8 (e) SUNSET.—Section 1212(f) of the Energy Policy
9 Act of 1992 (42 U.S.C. 13317(f)) is amended by striking
10 “the expiration of” and all that follows through “of this
11 section” and inserting “September 30, 2025”.

12 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
13 1212(g) of the Energy Policy Act of 1992 (42 U.S.C.
14 13317(g)) is amended to read as follows:

15 “(g) AUTHORIZATION OF APPROPRIATIONS.—

16 “(1) IN GENERAL.—Subject to paragraph (2),
17 there are authorized to be appropriated such sums
18 as may be necessary to carry out this section for fis-
19 cal years 2005 through 2025.

20 “(2) AVAILABILITY OF FUNDS.—Funds made
21 available under paragraph (1) shall remain available
22 until expended.”.

23 **SEC. 203. FEDERAL PURCHASE REQUIREMENT.**

24 (a) REQUIREMENT.—The President, acting through
25 the Secretary of Energy, shall seek to ensure that, to the



1 extent economically feasible and technically practicable, of
2 the total amount of electric energy the Federal Govern-
3 ment consumes during any fiscal year, the following
4 amounts shall be renewable energy:

5 (1) Not less than 3 percent in fiscal years 2007
6 through 2009.

7 (2) Not less than 5 percent in fiscal years 2010
8 through 2012.

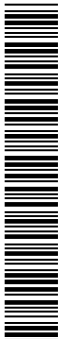
9 (3) Not less than 7.5 percent in fiscal year
10 2013 and each fiscal year thereafter.

11 (b) DEFINITIONS.—In this section:

12 (1) BIOMASS.—The term “biomass” means any
13 solid, nonhazardous, cellulosic material that is de-
14 rived from—

15 (A) any of the following forest-related re-
16 sources: mill residues, precommercial thinnings,
17 slash, and brush, or nonmerchantable material;

18 (B) solid wood waste materials, including
19 waste pallets, crates, dunnage, manufacturing
20 and construction wood wastes (other than pres-
21 sure-treated, chemically-treated, or painted
22 wood wastes), and landscape or right-of-way
23 tree trimmings, but not including municipal
24 solid waste (garbage), gas derived from the bio-



1 degradation of solid waste, or paper that is
2 commonly recycled;

3 (C) agriculture wastes, including orchard
4 tree crops, vineyard, grain, legumes, sugar, and
5 other crop by-products or residues, and live-
6 stock waste nutrients; or

7 (D) a plant that is grown exclusively as a
8 fuel for the production of electricity.

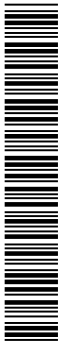
9 (2) RENEWABLE ENERGY.—The term “renew-
10 able energy” means electric energy generated from
11 solar, wind, biomass, landfill gas, geothermal, munic-
12 ipal solid waste, or new hydroelectric generation ca-
13 pacity achieved from increased efficiency or addi-
14 tions of new capacity at an existing hydroelectric
15 project.

16 (c) CALCULATION.—For purposes of determining
17 compliance with the requirement of this section, the
18 amount of renewable energy shall be doubled if—

19 (1) the renewable energy is produced and used
20 on-site at a Federal facility;

21 (2) the renewable energy is produced on Fed-
22 eral lands and used at a Federal facility; or

23 (3) the renewable energy is produced on Indian
24 land as defined in title XXVI of the Energy Policy



1 Act of 1992 (25 U.S.C. 3501 et. seq.) and used at
2 a Federal facility.

3 (d) REPORT.—Not later than April 15, 2007, and
4 every 2 years thereafter, the Secretary of Energy shall
5 provide a report to Congress on the progress of the Fed-
6 eral Government in meeting the goals established by this
7 section.

8 **SEC. 204. INSULAR AREAS ENERGY SECURITY.**

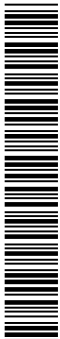
9 Section 604 of the Act entitled “An Act to authorize
10 appropriations for certain insular areas of the United
11 States, and for other purposes”, approved December 24,
12 1980 (48 U.S.C. 1492), is amended—

13 (1) in subsection (a)(4) by striking the period
14 and inserting a semicolon;

15 (2) by adding at the end of subsection (a) the
16 following new paragraphs:

17 “(5) electric power transmission and distribu-
18 tion lines in insular areas are inadequate to with-
19 stand damage caused by the hurricanes and ty-
20 phoons which frequently occur in insular areas and
21 such damage often costs millions of dollars to repair;
22 and

23 “(6) the refinement of renewable energy tech-
24 nologies since the publication of the 1982 Territorial
25 Energy Assessment prepared pursuant to subsection



1 (c) reveals the need to reassess the state of energy
2 production, consumption, infrastructure, reliance on
3 imported energy, opportunities for energy conserva-
4 tion and increased energy efficiency, and indigenous
5 sources in regard to the insular areas.”;

6 (3) by amending subsection (e) to read as fol-
7 lows:

8 “(e)(1) The Secretary of the Interior, in consultation
9 with the Secretary of Energy and the head of government
10 of each insular area, shall update the plans required under
11 subsection (c) by—

12 “(A) updating the contents required by sub-
13 section (c);

14 “(B) drafting long-term energy plans for such
15 insular areas with the objective of reducing, to the
16 extent feasible, their reliance on energy imports by
17 the year 2012, increasing energy conservation and
18 energy efficiency, and maximizing, to the extent fea-
19 sible, use of indigenous energy sources; and

20 “(C) drafting long-term energy transmission
21 line plans for such insular areas with the objective
22 that the maximum percentage feasible of electric
23 power transmission and distribution lines in each in-
24 sular area be protected from damage caused by hur-
25 ricanes and typhoons.



1 “(2) Not later than December 31, 2007, the Sec-
2 retary of the Interior shall submit to Congress the updated
3 plans for each insular area required by this subsection.”;
4 and

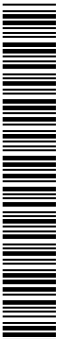
5 (4) by amending subsection (g)(4) to read as
6 follows:

7 “(4) POWER LINE GRANTS FOR INSULAR
8 AREAS.—

9 “(A) IN GENERAL.—The Secretary of the
10 Interior is authorized to make grants to govern-
11 ments of insular areas of the United States to
12 carry out eligible projects to protect electric
13 power transmission and distribution lines in
14 such insular areas from damage caused by hur-
15 ricanes and typhoons.

16 “(B) ELIGIBLE PROJECTS.—The Secretary
17 may award grants under subparagraph (A) only
18 to governments of insular areas of the United
19 States that submit written project plans to the
20 Secretary for projects that meet the following
21 criteria:

22 “(i) The project is designed to protect
23 electric power transmission and distribu-
24 tion lines located in 1 or more of the insu-



1 lar areas of the United States from dam-
2 age caused by hurricanes and typhoons.

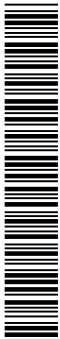
3 “(ii) The project is likely to substan-
4 tially reduce the risk of future damage,
5 hardship, loss, or suffering.

6 “(iii) The project addresses 1 or more
7 problems that have been repetitive or that
8 pose a significant risk to public health and
9 safety.

10 “(iv) The project is not likely to cost
11 more than the value of the reduction in di-
12 rect damage and other negative impacts
13 that the project is designed to prevent or
14 mitigate. The cost benefit analysis required
15 by this criterion shall be computed on a
16 net present value basis.

17 “(v) The project design has taken into
18 consideration long-term changes to the
19 areas and persons it is designed to protect
20 and has manageable future maintenance
21 and modification requirements.

22 “(vi) The project plan includes an
23 analysis of a range of options to address
24 the problem it is designed to prevent or



1 mitigate and a justification for the selec-
2 tion of the project in light of that analysis.

3 “(vii) The applicant has demonstrated
4 to the Secretary that the matching funds
5 required by subparagraph (D) are avail-
6 able.

7 “(C) PRIORITY.—When making grants
8 under this paragraph, the Secretary shall give
9 priority to grants for projects which are likely
10 to—

11 “(i) have the greatest impact on re-
12 ducing future disaster losses; and

13 “(ii) best conform with plans that
14 have been approved by the Federal Govern-
15 ment or the government of the insular area
16 where the project is to be carried out for
17 development or hazard mitigation for that
18 insular area.

19 “(D) MATCHING REQUIREMENT.—The
20 Federal share of the cost for a project for which
21 a grant is provided under this paragraph shall
22 not exceed 75 percent of the total cost of that
23 project. The non-Federal share of the cost may
24 be provided in the form of cash or services.



1 “(E) TREATMENT OF FUNDS FOR CERTAIN
2 PURPOSES.—Grants provided under this para-
3 graph shall not be considered as income, a re-
4 source, or a duplicative program when deter-
5 mining eligibility or benefit levels for Federal
6 major disaster and emergency assistance.

7 “(F) AUTHORIZATION OF APPROPRIA-
8 TIONS.—There are authorized to be appro-
9 priated to carry out this paragraph \$5,000,000
10 for each fiscal year beginning after the date of
11 the enactment of this paragraph.”.

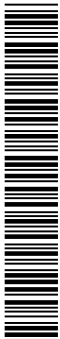
12 **SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**
13 **BUILDINGS.**

14 (a) IN GENERAL.—Subchapter VI of chapter 31 of
15 title 40, United States Code, is amended by adding at the
16 end the following:

17 **“§ 3177. Use of photovoltaic energy in public build-**
18 **ings**

19 “(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION
20 PROGRAM.—

21 “(1) IN GENERAL.—The Administrator of Gen-
22 eral Services may establish a photovoltaic energy
23 commercialization program for the procurement and
24 installation of photovoltaic solar electric systems for



1 electric production in new and existing public build-
2 ings.

3 “(2) PURPOSES.—The purposes of the program
4 shall be to accomplish the following:

5 “(A) To accelerate the growth of a com-
6 mercially viable photovoltaic industry to make
7 this energy system available to the general pub-
8 lic as an option which can reduce the national
9 consumption of fossil fuel.

10 “(B) To reduce the fossil fuel consumption
11 and costs of the Federal Government.

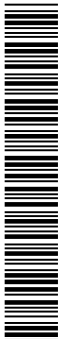
12 “(C) To attain the goal of installing solar
13 energy systems in 20,000 Federal buildings by
14 2010, as contained in the Federal Government’s
15 Million Solar Roof Initiative of 1997.

16 “(D) To stimulate the general use within
17 the Federal Government of life-cycle costing
18 and innovative procurement methods.

19 “(E) To develop program performance
20 data to support policy decisions on future incen-
21 tive programs with respect to energy.

22 “(3) ACQUISITION OF PHOTOVOLTAIC SOLAR
23 ELECTRIC SYSTEMS.—

24 “(A) IN GENERAL.—The program shall
25 provide for the acquisition of photovoltaic solar



1 electric systems and associated storage capa-
2 bility for use in public buildings.

3 “(B) ACQUISITION LEVELS.—The acquisi-
4 tion of photovoltaic electric systems shall be at
5 a level substantial enough to allow use of low-
6 cost production techniques with at least 150
7 megawatts (peak) cumulative acquired during
8 the 5 years of the program.

9 “(4) ADMINISTRATION.—The Administrator
10 shall administer the program and shall—

11 “(A) issue such rules and regulations as
12 may be appropriate to monitor and assess the
13 performance and operation of photovoltaic solar
14 electric systems installed pursuant to this sub-
15 section;

16 “(B) develop innovative procurement strat-
17 egies for the acquisition of such systems; and

18 “(C) transmit to Congress an annual re-
19 port on the results of the program.

20 “(b) PHOTOVOLTAIC SYSTEMS EVALUATION PRO-
21 GRAM.—

22 “(1) IN GENERAL.—Not later than 60 days
23 after the date of enactment of this section, the Ad-
24 ministrator, in consultation with the Secretary of
25 Energy, shall establish a photovoltaic solar energy



1 systems evaluation program to evaluate such photo-
2 voltaic solar energy systems as are required in public
3 buildings.

4 “(2) PROGRAM REQUIREMENT.—In evaluating
5 photovoltaic solar energy systems under the pro-
6 gram, the Administrator shall ensure that such sys-
7 tems reflect the most advanced technology.

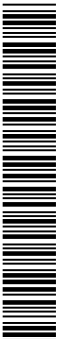
8 “(c) AUTHORIZATION OF APPROPRIATIONS.—

9 “(1) PHOTOVOLTAIC ENERGY COMMERCIALIZA-
10 TION PROGRAM.—There are authorized to be appro-
11 priated to carry out subsection (a) \$50,000,000 for
12 each of fiscal years 2006 through 2010. Such sums
13 shall remain available until expended.

14 “(2) PHOTOVOLTAIC SYSTEMS EVALUATION
15 PROGRAM.—There are authorized to be appropriated
16 to carry out subsection (b) \$10,000,000 for each of
17 fiscal years 2006 through 2010. Such sums shall re-
18 main available until expended.”.

19 (b) CONFORMING AMENDMENT.—The section anal-
20 ysis for such chapter is amended by inserting after the
21 item relating to section 3176 the following:

“3177. Use of photovoltaic energy in public buildings.”.



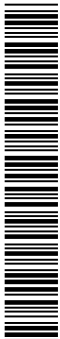
1 **SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE**
2 **OF FOREST BIOMASS FOR ELECTRIC ENERGY,**
3 **USEFUL HEAT, TRANSPORTATION FUELS, PE-**
4 **TROLEUM-BASED PRODUCT SUBSTITUTES,**
5 **AND OTHER COMMERCIAL PURPOSES.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) Thousands of communities in the United
8 States, many located near Federal lands, are at risk
9 to wildfire. Approximately 190,000,000 acres of land
10 managed by the Secretary of Agriculture and the
11 Secretary of the Interior are at risk of catastrophic
12 fire in the near future. The accumulation of heavy
13 forest fuel loads continues to increase as a result of
14 disease, insect infestations, and drought, further
15 raising the risk of fire each year.

16 (2) In addition, more than 70,000,000 acres
17 across all land ownerships are at risk to higher than
18 normal mortality over the next 15 years from insect
19 infestation and disease. High levels of tree mortality
20 from insects and disease result in increased fire risk,
21 loss of old growth, degraded watershed conditions,
22 and changes in species diversity and productivity, as
23 well as diminished fish and wildlife habitat and de-
24 creased timber values.

25 (3) Preventive treatments such as removing fuel
26 loading, ladder fuels, and hazard trees, planting

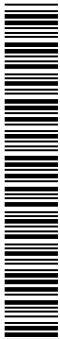


1 proper species mix and restoring and protecting
2 early successional habitat, and other specific restora-
3 tion treatments designed to reduce the susceptibility
4 of forest land, woodland, and rangeland to insect
5 outbreaks, disease, and catastrophic fire present the
6 greatest opportunity for long-term forest health by
7 creating a mosaic of species-mix and age distribu-
8 tion. Such prevention treatments are widely acknowl-
9 edged to be more successful and cost effective than
10 suppression treatments in the case of insects, dis-
11 ease, and fire.

12 (4) The byproducts of preventive treatment
13 (wood, brush, thinnings, chips, slash, and other haz-
14 ardous fuels) removed from forest lands, woodlands
15 and rangelands represent an abundant supply of bio-
16 mass for biomass-to-energy facilities and raw mate-
17 rial for business. There are currently few markets
18 for the extraordinary volumes of byproducts being
19 generated as a result of the necessary large-scale
20 preventive treatment activities.

21 (5) The United States should—

22 (A) promote economic and entrepreneurial
23 opportunities in using byproducts removed
24 through preventive treatment activities related



1 to hazardous fuels reduction, disease, and insect
2 infestation; and

3 (B) develop and expand markets for tradi-
4 tionally underused wood and biomass as an out-
5 let for byproducts of preventive treatment ac-
6 tivities.

7 (b) DEFINITIONS.—In this section:

8 (1) BIOMASS.—The term “biomass” means
9 trees and woody plants, including limbs, tops, nee-
10 dles, and other woody parts, and byproducts of pre-
11 ventive treatment, such as wood, brush, thinnings,
12 chips, and slash, that are removed—

13 (A) to reduce hazardous fuels; or

14 (B) to reduce the risk of or to contain dis-
15 ease or insect infestation.

16 (2) INDIAN TRIBE.—The term “Indian tribe”
17 has the meaning given the term in section 4(e) of
18 the Indian Self-Determination and Education Assist-
19 ance Act (25 U.S.C. 450b(e)).

20 (3) PERSON.—The term “person” includes—

21 (A) an individual;

22 (B) a community (as determined by the
23 Secretary concerned);

24 (C) an Indian tribe;



1 (D) a small business, micro-business, or a
2 corporation that is incorporated in the United
3 States; and

4 (E) a nonprofit organization.

5 (4) PREFERRED COMMUNITY.—The term “pre-
6 ferred community” means—

7 (A) any town, township, municipality, or
8 other similar unit of local government (as deter-
9 mined by the Secretary concerned) that—

10 (i) has a population of not more than
11 50,000 individuals; and

12 (ii) the Secretary concerned, in the
13 sole discretion of the Secretary concerned,
14 determines contains or is located near
15 land, the condition of which is at signifi-
16 cant risk of catastrophic wildfire, disease,
17 or insect infestation or which suffers from
18 disease or insect infestation; or

19 (B) any county that—

20 (i) is not contained within a metro-
21 politan statistical area; and

22 (ii) the Secretary concerned, in the
23 sole discretion of the Secretary concerned,
24 determines contains or is located near
25 land, the condition of which is at signifi-



1 cant risk of catastrophic wildfire, disease,
2 or insect infestation or which suffers from
3 disease or insect infestation.

4 (5) SECRETARY CONCERNED.—The term “Sec-
5 retary concerned” means—

6 (A) the Secretary of Agriculture with re-
7 spect to National Forest System lands; and

8 (B) the Secretary of the Interior with re-
9 spect to Federal lands under the jurisdiction of
10 the Secretary of the Interior and Indian lands.

11 (c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—

12 (1) IN GENERAL.—The Secretary concerned
13 may make grants to any person that owns or oper-
14 ates a facility that uses biomass as a raw material
15 to produce electric energy, sensible heat, transpor-
16 tation fuels, or substitutes for petroleum-based prod-
17 ucts to offset the costs incurred to purchase biomass
18 for use by such facility.

19 (2) GRANT AMOUNTS.—A grant under this sub-
20 section may not exceed \$20 per green ton of biomass
21 delivered.

22 (3) MONITORING OF GRANT RECIPIENT ACTIVI-
23 TIES.—As a condition of a grant under this sub-
24 section, the grant recipient shall keep such records
25 as the Secretary concerned may require to fully and



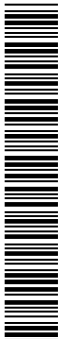
1 correctly disclose the use of the grant funds and all
2 transactions involved in the purchase of biomass.
3 Upon notice by a representative of the Secretary
4 concerned, the grant recipient shall afford the rep-
5 resentative reasonable access to the facility that pur-
6 chases or uses biomass and an opportunity to exam-
7 ine the inventory and records of the facility.

8 (d) IMPROVED BIOMASS USE GRANT PROGRAM.—

9 (1) IN GENERAL.—The Secretary concerned
10 may make grants to persons to offset the cost of
11 projects to develop or research opportunities to im-
12 prove the use of, or add value to, biomass. In mak-
13 ing such grants, the Secretary concerned shall give
14 preference to persons in preferred communities.

15 (2) SELECTION.—The Secretary concerned shall
16 select a grant recipient under paragraph (1) after
17 giving consideration to the anticipated public bene-
18 fits of the project, including the potential to develop
19 thermal or electric energy resources or affordable en-
20 ergy, opportunities for the creation or expansion of
21 small businesses and micro-businesses, and the po-
22 tential for new job creation.

23 (3) GRANT AMOUNT.—A grant under this sub-
24 section may not exceed \$500,000.



1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated \$50,000,000 for each
3 of the fiscal years 2006 through 2016 to carry out this
4 section.

5 (f) REPORT.—Not later than October 1, 2012, the
6 Secretary of Agriculture, in consultation with the Sec-
7 retary of the Interior, shall submit to the Committee on
8 Energy and Natural Resources and the Committee on Ag-
9 riculture, Nutrition, and Forestry of the Senate and the
10 Committee on Resources, the Committee on Energy and
11 Commerce, and the Committee on Agriculture of the
12 House of Representatives a report describing the results
13 of the grant programs authorized by this section. The re-
14 port shall include the following:

15 (1) An identification of the size, type, and the
16 use of biomass by persons that receive grants under
17 this section.

18 (2) The distance between the land from which
19 the biomass was removed and the facility that used
20 the biomass.

21 (3) The economic impacts, particularly new job
22 creation, resulting from the grants to and operation
23 of the eligible operations.



1 **SEC. 207. BIOBASED PRODUCTS.**

2 Section 9002(c)(1) of the Farm Security and Rural
3 Investment Act of 2002 (7 U.S.C. 8102(c)(1)) is amended
4 by inserting “or such items that comply with the regula-
5 tions issued under section 103 of Public Law 100–556 (42
6 U.S.C. 6914b–1)” after “practicable”.

7 **Subtitle B—Geothermal Energy**

8 **SEC. 211. SHORT TITLE.**

9 This subtitle may be cited as the “John Rishel Geo-
10 thermal Steam Act Amendments of 2005”.

11 **SEC. 212. COMPETITIVE LEASE SALE REQUIREMENTS.**

12 Section 4 of the Geothermal Steam Act of 1970 (30
13 U.S.C. 1003) is amended to read as follows:

14 **“SEC. 4. LEASING PROCEDURES.**

15 “(a) **NOMINATIONS.**—The Secretary shall accept
16 nominations of lands to be leased at any time from quali-
17 fied companies and individuals under this Act.

18 “(b) **COMPETITIVE LEASE SALE REQUIRED.**—The
19 Secretary shall hold a competitive lease sale at least once
20 every 2 years for lands in a State which has nominations
21 pending under subsection (a) if such lands are otherwise
22 available for leasing.

23 “(c) **NONCOMPETITIVE LEASING.**—The Secretary
24 shall make available for a period of 2 years for non-
25 competitive leasing any tract for which a competitive lease



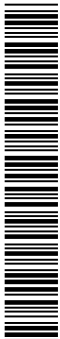
1 sale is held, but for which the Secretary does not receive
2 any bids in a competitive lease sale.

3 “(d) LEASES SOLD AS A BLOCK.—If information is
4 available to the Secretary indicating a geothermal resource
5 that could be produced as 1 unit can reasonably be ex-
6 pected to underlie more than 1 parcel to be offered in a
7 competitive lease sale, the parcels for such a resource may
8 be offered for bidding as a block in the competitive lease
9 sale.

10 “(e) PENDING LEASE APPLICATIONS ON APRIL 1,
11 2003.—It shall be a priority for the Secretary of the Inte-
12 rior, and for the Secretary of Agriculture with respect to
13 National Forest Systems lands, to ensure timely comple-
14 tion of administrative actions necessary to process applica-
15 tions for geothermal leasing pending on April 1, 2003.
16 Such an application, and any lease issued pursuant to
17 such an application—

18 “(1) except as provided in paragraph (2), shall
19 be subject to this section as in effect on April 1,
20 2003; or

21 “(2) at the election of the applicant, shall be
22 subject to this section as in effect on the effective
23 date of this paragraph.”.



1 **SEC. 213. DIRECT USE.**

2 (a) FEES FOR DIRECT USE.—Section 5 of the Geo-
3 thermal Steam Act of 1970 (30 U.S.C. 1004) is
4 amended—

5 (1) in paragraph (c) by redesignating subpara-
6 graphs (1) and (2) as subparagraphs (A) and (B);

7 (2) by redesignating paragraphs (a) through (d)
8 in order as paragraphs (1) through (4);

9 (3) by inserting “(a) IN GENERAL.—” after
10 “SEC. 5.”; and

11 (4) by adding at the end the following:

12 “(b) DIRECT USE.—Notwithstanding subsection
13 (a)(1), with respect to the direct use of geothermal re-
14 sources for purposes other than the commercial generation
15 of electricity, the Secretary of the Interior shall establish
16 a schedule of fees and collect fees pursuant to such a
17 schedule in lieu of royalties based upon the total amount
18 of the geothermal resources used. The schedule of fees
19 shall ensure that there is a fair return to the public for
20 the use of a geothermal resource based upon comparable
21 fees charged for direct use of geothermal resources by
22 States or private persons. For direct use by a State or
23 local government for public purposes there shall be no roy-
24 alty and the fee charged shall be nominal. Leases in exist-
25 ence on the date of enactment of the Energy Policy Act



1 of 2005 shall be modified in order to reflect the provisions
2 of this subsection.”.

3 (b) LEASING FOR DIRECT USE.—Section 4 of the
4 Geothermal Steam Act of 1970 (30 U.S.C. 1003) is fur-
5 ther amended by adding at the end the following:

6 “(f) LEASING FOR DIRECT USE OF GEOTHERMAL
7 RESOURCES.—Lands leased under this Act exclusively for
8 direct use of geothermal resources shall be leased to any
9 qualified applicant who first applies for such a lease under
10 regulations issued by the Secretary, if—

11 “(1) the Secretary publishes a notice of the
12 lands proposed for leasing 60 days before the date
13 of the issuance of the lease; and

14 “(2) the Secretary does not receive in the 60-
15 day period beginning on the date of such publication
16 any nomination to include the lands concerned in the
17 next competitive lease sale.

18 “(g) AREA SUBJECT TO LEASE FOR DIRECT USE.—
19 A geothermal lease for the direct use of geothermal re-
20 sources shall embrace not more than the amount of acre-
21 age determined by the Secretary to be reasonably nec-
22 essary for such proposed utilization.”.

23 (c) EXISTING LEASES WITH A DIRECT USE FACIL-
24 ITY.—



1 (1) APPLICATION TO CONVERT.—Any lessee
2 under a lease under the Geothermal Steam Act of
3 1970 that was issued before the date of the enact-
4 ment of this Act may apply to the Secretary of the
5 Interior, by not later than 18 months after the date
6 of the enactment of this Act, to convert such lease
7 to a lease for direct utilization of geothermal re-
8 sources in accordance with the amendments made by
9 this section.

10 (2) CONVERSION.—The Secretary shall approve
11 such an application and convert such a lease to a
12 lease in accordance with the amendments by not
13 later than 180 days after receipt of such application,
14 unless the Secretary determines that the applicant is
15 not a qualified applicant with respect to the lease.

16 (3) APPLICATION OF NEW LEASE TERMS.—The
17 amendment made by subsection (a)(4) shall apply
18 with respect to payments under a lease converted
19 under this subsection that are due and owing to the
20 United States on or after July 16, 2003.

21 **SEC. 214. ROYALTIES AND NEAR-TERM PRODUCTION IN-**
22 **CENTIVES.**

23 (a) ROYALTY.—Section 5 of the Geothermal Steam
24 Act of 1970 (30 U.S.C. 1004) is further amended—



1 (1) in subsection (a) by striking paragraph (1)
2 and inserting the following:

3 “(1) a royalty on electricity produced using geo-
4 thermal steam and associated geothermal resources,
5 other than direct use of geothermal resources, that
6 shall be—

7 “(A) not less than 1 percent and not more
8 than 2.5 percent of the gross proceeds from the
9 sale of electricity produced from such resources
10 during the first 10 years of production under
11 the lease; and

12 “(B) not less than 2 and not more than 5
13 percent of the gross proceeds from the sale of
14 electricity produced from such resources during
15 each year after such 10-year period;” and

16 (2) by adding at the end the following:

17 “(c) FINAL REGULATION ESTABLISHING ROYALTY
18 RATES.—In issuing any final regulation establishing roy-
19 alty rates under this section, the Secretary shall seek—

20 “(1) to provide lessees a simplified administra-
21 tive system;

22 “(2) to encourage new development; and

23 “(3) to achieve the same long-term level of roy-
24 alty revenues to States and counties as the regula-



1 tion in effect on the date of enactment of this sub-
2 section.

3 “(d) CREDITS FOR IN-KIND PAYMENTS OF ELEC-
4 TRICITY.—The Secretary may provide to a lessee a credit
5 against royalties owed under this Act, in an amount equal
6 to the value of electricity provided under contract to a
7 State or county government that is entitled to a portion
8 of such royalties under section 20 of this Act, section 35
9 of the Mineral Leasing Act (30 U.S.C. 191), or section
10 6 of the Mineral Leasing Act for Acquired Lands (30
11 U.S.C. 355), if—

12 “(1) the Secretary has approved in advance the
13 contract between the lessee and the State or county
14 government for such in-kind payments;

15 “(2) the contract establishes a specific method-
16 ology to determine the value of such credits; and

17 “(3) the maximum credit will be equal to the
18 royalty value owed to the State or county that is a
19 party to the contract and the electricity received will
20 serve as the royalty payment from the Federal Gov-
21 ernment to that entity.”.

22 (b) DISPOSAL OF MONEYS FROM SALES, BONUSES,
23 ROYALTIES, AND RENTALS.—Section 20 of the Geo-
24 thermal Steam Act of 1970 (30 U.S.C. 1019) is amended
25 to read as follows:



1 **“SEC. 20. DISPOSAL OF MONEYS FROM SALES, BONUSES,**
2 **RENTALS, AND ROYALTIES.**

3 “(a) IN GENERAL.—Except with respect to lands in
4 the State of Alaska, all monies received by the United
5 States from sales, bonuses, rentals, and royalties under
6 this Act shall be paid into the Treasury of the United
7 States. Of amounts deposited under this subsection, sub-
8 ject to the provisions of section 35 of the Mineral Leasing
9 Act (30 U.S.C. 191(b)) and section 5(a)(2) of this Act—

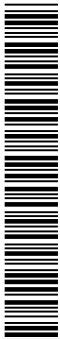
10 “(1) 50 percent shall be paid to the State with-
11 in the boundaries of which the leased lands or geo-
12 thermal resources are or were located; and

13 “(2) 25 percent shall be paid to the County
14 within the boundaries of which the leased lands or
15 geothermal resources are or were located.

16 “(b) USE OF PAYMENTS.—Amounts paid to a State
17 or county under subsection (a) shall be used consistent
18 with the terms of section 35 of the Mineral Leasing Act
19 (30 U.S.C. 191).”.

20 (c) NEAR-TERM PRODUCTION INCENTIVE FOR EX-
21 ISTING LEASES.—

22 (1) IN GENERAL.—Notwithstanding section
23 5(a) of the Geothermal Steam Act of 1970, the roy-
24 alty required to be paid shall be 50 percent of the
25 amount of the royalty otherwise required, on any
26 lease issued before the date of enactment of this Act



1 that does not convert to new royalty terms under
2 subsection (e)—

3 (A) with respect to commercial production
4 of energy from a facility that begins such pro-
5 duction in the 6-year period beginning on the
6 date of the enactment of this Act; or

7 (B) on qualified expansion geothermal en-
8 ergy.

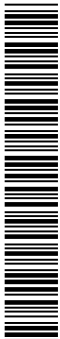
9 (2) 4-YEAR APPLICATION.—Paragraph (1) ap-
10 plies only to new commercial production of energy
11 from a facility in the first 4 years of such produc-
12 tion.

13 (d) DEFINITION OF QUALIFIED EXPANSION GEO-
14 THERMAL ENERGY.—In this section, the term “qualified
15 expansion geothermal energy” means geothermal energy
16 produced from a generation facility for which—

17 (1) the production is increased by more than 10
18 percent as a result of expansion of the facility car-
19 ried out in the 6-year period beginning on the date
20 of the enactment of this Act; and

21 (2) such production increase is greater than 10
22 percent of the average production by the facility dur-
23 ing the 5-year period preceding the expansion of the
24 facility.

25 (e) ROYALTY UNDER EXISTING LEASES.—



1 (1) IN GENERAL.—Any lessee under a lease
2 issued under the Geothermal Steam Act of 1970 be-
3 fore the date of the enactment of this Act may mod-
4 ify the terms of the lease relating to payment of roy-
5 alties to comply with the amendment made by sub-
6 section (a), by applying to the Secretary of the Inte-
7 rior by not later than 18 months after the date of
8 the enactment of this Act.

9 (2) APPLICATION OF MODIFICATION.—Such
10 modification shall apply to any use of geothermal
11 steam and any associated geothermal resources to
12 which the amendment applies that occurs after the
13 date of that application.

14 (3) CONSULTATION.—The Secretary—

15 (A) shall consult with the State and local
16 governments affected by any proposed changes
17 in lease royalty terms under this subsection;
18 and

19 (B) may establish a gross proceeds per-
20 centage within the range specified in the
21 amendment made by subsection (a)(1) and with
22 the concurrence of the lessee and the State.



1 **SEC. 215. GEOTHERMAL LEASING AND PERMITTING ON**
2 **FEDERAL LANDS.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of the enactment of this section, the Secretary of the
5 Interior and the Secretary of Agriculture shall enter into
6 and submit to Congress a memorandum of understanding
7 in accordance with this section regarding leasing and per-
8 mitting for geothermal development of public lands and
9 National Forest System lands under their respective juris-
10 dictions.

11 (b) LEASE AND PERMIT APPLICATIONS.—The memo-
12 randum of understanding shall—

13 (1) identify areas with geothermal potential on
14 lands included in the National Forest System and,
15 when necessary, require review of management plans
16 to consider leasing under the Geothermal Steam Act
17 of 1970 (30 U.S.C. 1001 et seq.) as a land use; and

18 (2) establish an administrative procedure for
19 processing geothermal lease applications, including
20 lines of authority, steps in application processing,
21 and time limits for application procession.

22 (c) DATA RETRIEVAL SYSTEM.—The memorandum
23 of understanding shall establish a joint data retrieval sys-
24 tem that is capable of tracking lease and permit applica-
25 tions and providing to the applicant information as to
26 their status within the Departments of the Interior and



1 Agriculture, including an estimate of the time required for
2 administrative action.

3 **SEC. 216. REVIEW AND REPORT TO CONGRESS.**

4 The Secretary of the Interior shall promptly review
5 and report to Congress not later than 3 years after the
6 date of the enactment of this Act regarding the status of
7 all withdrawals from leasing under the Geothermal Steam
8 Act of 1970 (30 U.S.C. 1001 et seq.) of Federal lands,
9 specifying for each such area whether the basis for such
10 withdrawal still applies.

11 **SEC. 217. REIMBURSEMENT FOR COSTS OF NEPA ANAL-**
12 **YSES, DOCUMENTATION, AND STUDIES.**

13 (a) IN GENERAL.—The Geothermal Steam Act of
14 1970 (30 U.S.C. 1001 et seq.) is amended by adding at
15 the end the following:

16 **“SEC. 30. REIMBURSEMENT FOR COSTS OF CERTAIN ANAL-**
17 **YSES, DOCUMENTATION, AND STUDIES.**

18 “(a) IN GENERAL.—The Secretary of the Interior
19 may reimburse a person that is a lessee, operator, oper-
20 ating rights owner, or applicant for any lease under this
21 Act for reasonable amounts paid by the person for prepa-
22 ration for the Secretary by a contractor or other person
23 selected by the Secretary of any project-level analysis, doc-
24 umentation, or related study required pursuant to the Na-



1 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
2 et seq.) with respect to the lease.

3 “(b) CONDITIONS.—The Secretary may provide reim-
4 bursement under subsection (a) only if—

5 “(1) adequate funding to enable the Secretary
6 to timely prepare the analysis, documentation, or re-
7 lated study is not appropriated;

8 “(2) the person paid the costs voluntarily;

9 “(3) the person maintains records of its costs
10 in accordance with regulations issued by the Sec-
11 retary;

12 “(4) the reimbursement is in the form of a re-
13 duction in the Federal share of the royalty required
14 to be paid for the lease for which the analysis, docu-
15 mentation, or related study is conducted, and is
16 agreed to by the Secretary and the person reim-
17 bursed prior to commencing the analysis, docu-
18 mentation, or related study; and

19 “(5) the agreement required under paragraph
20 (4) contains provisions—

21 “(A) reducing royalties owed on lease pro-
22 duction based on market prices;

23 “(B) stipulating an automatic termination
24 of the royalty reduction upon recovery of docu-
25 mented costs; and



1 **SEC. 219. COOPERATIVE OR UNIT PLANS.**

2 Section 18 of the Geothermal Steam Act of 1970 (30
3 U.S.C. 1017) is amended to read as follows:

4 **“SEC. 18. UNIT AND COMMUNITIZATION AGREEMENTS.**

5 **“(a) ADOPTION OF UNITS BY LESSEES.—**

6 **“(1) IN GENERAL.—**For the purpose of more
7 properly conserving the natural resources of any
8 geothermal reservoir, field, or like area, or any part
9 thereof (whether or not any part of the geothermal
10 field, or like area, is then subject to any Unit Agree-
11 ment (cooperative plan of development or oper-
12 ation)), lessees thereof and their representatives may
13 unite with each other, or jointly or separately with
14 others, in collectively adopting and operating under
15 a Unit Agreement for such field, or like area, or any
16 part thereof including direct use resources, if deter-
17 mined and certified by the Secretary to be necessary
18 or advisable in the public interest. A majority inter-
19 est of owners of any single lease shall have the au-
20 thority to commit that lease to a Unit Agreement.
21 The Secretary of the Interior may also initiate the
22 formation of a Unit Agreement if in the public inter-
23 est.

24 **“(2) MODIFICATION OF LEASE REQUIREMENTS**
25 **BY SECRETARY.—**The Secretary may, in the discre-
26 tion of the Secretary, and with the consent of the



1 holders of leases involved, establish, alter, change, or
2 revoke rates of operations (including drilling, oper-
3 ations, production, and other requirements) of such
4 leases and make conditions with reference to such
5 leases, with the consent of the lessees, in connection
6 with the creation and operation of any such Unit
7 Agreement as the Secretary may deem necessary or
8 proper to secure the proper protection of the public
9 interest. Leases with unlike lease terms or royalty
10 rates do not need to be modified to be in the same
11 unit.

12 “(b) REQUIREMENT OF PLANS UNDER NEW
13 LEASES.—The Secretary—

14 “(1) may provide that geothermal leases issued
15 under this Act shall contain a provision requiring
16 the lessee to operate under such a reasonable Unit
17 Agreement; and

18 “(2) may prescribe such an Agreement under
19 which such lessee shall operate, which shall ade-
20 quately protect the rights of all parties in interest,
21 including the United States.

22 “(c) MODIFICATION OF RATE OF PROSPECTING, DE-
23 VELOPMENT, AND PRODUCTION.—The Secretary may re-
24 quire that any Agreement authorized by this section that
25 applies to lands owned by the United States contain a pro-



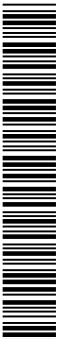
1 vision under which authority is vested in the Secretary,
2 or any person, committee, or State or Federal officer or
3 agency as may be designated in the Agreement to alter
4 or modify from time to time the rate of prospecting and
5 development and the quantity and rate of production
6 under such an Agreement.

7 “(d) EXCLUSION FROM DETERMINATION OF HOLD-
8 ING OR CONTROL.—Any lands that are subject to any
9 Agreement approved or prescribed by the Secretary under
10 this section shall not be considered in determining hold-
11 ings or control under any provision of this Act.

12 “(e) POOLING OF CERTAIN LANDS.—If separate
13 tracts of lands cannot be independently developed and op-
14 erated to use geothermal steam and associated geothermal
15 resources pursuant to any section of this Act—

16 “(1) such lands, or a portion thereof, may be
17 pooled with other lands, whether or not owned by
18 the United States, for purposes of development and
19 operation under a Communitization Agreement pro-
20 viding for an apportionment of production or royal-
21 ties among the separate tracts of land comprising
22 the production unit, if such pooling is determined by
23 the Secretary to be in the public interest; and

24 “(2) operation or production pursuant to such
25 an Agreement shall be treated as operation or pro-



1 duction with respect to each tract of land that is
2 subject to the agreement.

3 “(f) UNIT AGREEMENT REVIEW.—No more than 5
4 years after approval of any cooperative or Unit Agreement
5 and at least every 5 years thereafter, the Secretary shall
6 review each such Agreement and, after notice and oppor-
7 tunity for comment, eliminate from inclusion in such
8 Agreement any lands that the Secretary determines are
9 not reasonably necessary for Unit operations under the
10 Agreement. Such elimination shall be based on scientific
11 evidence, and shall occur only if it is determined by the
12 Secretary to be for the purpose of conserving and properly
13 managing the geothermal resource. Any land so eliminated
14 shall be eligible for an extension under subsection (g) of
15 section 6 if it meets the requirements for such an exten-
16 sion.

17 “(g) DRILLING OR DEVELOPMENT CONTRACTS.—
18 The Secretary may, on such conditions as the Secretary
19 may prescribe, approve drilling or development contracts
20 made by 1 or more lessees of geothermal leases, with 1
21 or more persons, associations, or corporations if, in the
22 discretion of the Secretary, the conservation of natural re-
23 sources or the public convenience or necessity may require
24 or the interests of the United States may be best served
25 thereby. All leases operated under such approved drilling



1 or development contracts, and interests thereunder, shall
2 be excepted in determining holdings or control under sec-
3 tion 7.

4 “(h) COORDINATION WITH STATE GOVERNMENTS.—
5 The Secretary shall coordinate unitization and pooling ac-
6 tivities with the appropriate State agencies and shall en-
7 sure that State leases included in any unitization or pool-
8 ing arrangement are treated equally with Federal leases.”.

9 **SEC. 220. ROYALTY ON BYPRODUCTS.**

10 Section 5 of the Geothermal Steam Act of 1970 (30
11 U.S.C. 1004) is further amended in subsection (a) by
12 striking paragraph (2) and inserting the following:

13 “(2) a royalty on any byproduct that is a min-
14 eral named in the first section of the Mineral Leas-
15 ing Act (30 U.S.C. 181), and that is derived from
16 production under the lease, at the rate of the royalty
17 that applies under that Act to production of such
18 mineral under a lease under that Act;”.

19 **SEC. 221. REPEAL OF AUTHORITIES OF SECRETARY TO RE-**
20 **ADJUST TERMS, CONDITIONS, RENTALS, AND**
21 **ROYALTIES.**

22 Section 8 of the Geothermal Steam Act of 1970 (30
23 U.S.C. 1007) is amended by repealing subsection (b), and
24 by redesignating subsection (c) as subsection (b).



1 **SEC. 222. CREDITING OF RENTAL TOWARD ROYALTY.**

2 Section 5 of the Geothermal Steam Act of 1970 (30
3 U.S.C. 1004) is further amended—

4 (1) in subsection (a)(2) by inserting “and”
5 after the semicolon at the end;

6 (2) in subsection (a)(3) by striking “; and” and
7 inserting a period;

8 (3) by striking paragraph (4) of subsection (a);
9 and

10 (4) by adding at the end the following:

11 “(e) CREDITING OF RENTAL TOWARD ROYALTY.—

12 Any annual rental under this section that is paid with re-
13 spect to a lease before the first day of the year for which
14 the annual rental is owed shall be credited to the amount
15 of royalty that is required to be paid under the lease for
16 that year.”.

17 **SEC. 223. LEASE DURATION AND WORK COMMITMENT RE-**
18 **QUIREMENTS.**

19 Section 6 of the Geothermal Steam Act of 1970 (30
20 U.S.C. 1005) is amended—

21 (1) by striking so much as precedes subsection
22 (c), and striking subsections (e), (g), (h), (i), and
23 (j);

24 (2) by redesignating subsections (c), (d), and
25 (f) in order as subsections (g), (h), and (i); and



1 (3) by inserting before subsection (g), as so re-
2 designated, the following:

3 **“SEC. 6. LEASE TERM AND WORK COMMITMENT REQUIRE-**
4 **MENTS.**

5 “(a) IN GENERAL.—

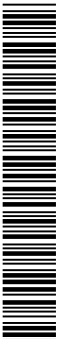
6 “(1) PRIMARY TERM.—A geothermal lease shall
7 be for a primary term of 10 years.

8 “(2) INITIAL EXTENSION.—The Secretary shall
9 extend the primary term of a geothermal lease for
10 5 years if, for each year after the fifth year of the
11 lease—

12 “(A) the Secretary determined under sub-
13 section (c) that the lessee satisfied the work
14 commitment requirements that applied to the
15 lease for that year; or

16 “(B) the lessee paid in accordance with
17 subsection (d) the value of any work that was
18 not completed in accordance with those require-
19 ments.

20 “(3) ADDITIONAL EXTENSION.—The Secretary
21 shall extend the primary term of a geothermal lease
22 (after an initial extension under paragraph (2)) for
23 an additional 5 years if, for each year of the initial
24 extension under paragraph (2), the Secretary deter-
25 mined under subsection (c) that the lessee satisfied



1 the work commitment requirements that applied to
2 the lease for that year.

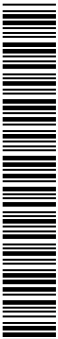
3 “(b) REQUIREMENT TO SATISFY ANNUAL WORK
4 COMMITMENT REQUIREMENT.—

5 “(1) IN GENERAL.—The lessee for a geothermal
6 lease shall, for each year after the fifth year of the
7 lease, satisfy work commitment requirements pre-
8 scribed by the Secretary that apply to the lease for
9 that year.

10 “(2) PRESCRIPTION OF WORK COMMITMENT RE-
11 QUIREMENTS.—The Secretary shall issue regulations
12 prescribing minimum equivalent dollar value work
13 commitment requirements for geothermal leases,
14 that—

15 “(A) require that a lessee, in each year
16 after the fifth year of the primary term of a
17 geothermal lease, diligently work to achieve
18 commercial production or utilization of steam
19 under the lease;

20 “(B) require that in each year to which
21 work commitment requirements under the regu-
22 lations apply, the lessee shall significantly re-
23 duce the amount of work that remains to be
24 done to achieve such production or utilization;



1 “(C) describe specific work that must be
2 completed by a lessee by the end of each year
3 to which the work commitment requirements
4 apply and factors, such as force majeure events,
5 that suspend or modify the work commitment
6 obligation;

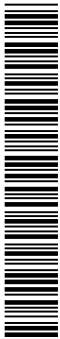
7 “(D) carry forward and apply to work
8 commitment requirements for a year, work
9 completed in any year in the preceding 3-year
10 period that was in excess of the work required
11 to be performed in that preceding year;

12 “(E) establish transition rules for leases
13 issued before the date of the enactment of this
14 subsection, including terms under which a lease
15 that is near the end of its term on the date of
16 enactment of this subsection may be extended
17 for up to 2 years—

18 “(i) to allow achievement of produc-
19 tion under the lease; or

20 “(ii) to allow the lease to be included
21 in a producing unit; and

22 “(F) establish an annual payment that, at
23 the option of the lessee, may be exercised in lieu
24 of meeting any work requirement for a limited
25 number of years that the Secretary determines



1 will not impair achieving diligent development
2 of the geothermal resource.

3 “(3) TERMINATION OF APPLICATION OF RE-
4 QUIREMENTS.—Work commitment requirements pre-
5 scribed under this subsection shall not apply to a
6 geothermal lease after the date on which geothermal
7 steam is produced or utilized under the lease in com-
8 mercial quantities.

9 “(c) DETERMINATION OF WHETHER REQUIREMENTS
10 SATISFIED.—The Secretary shall, by not later than 90
11 days after the end of each year for which work commit-
12 ment requirements under subsection (b) apply to a geo-
13 thermal lease—

14 “(1) determine whether the lessee has satisfied
15 the requirements that apply for that year;

16 “(2) notify the lessee of that determination; and

17 “(3) in the case of a notification that the lessee
18 did not satisfy work commitment requirements for
19 the year, include in the notification—

20 “(A) a description of the specific work that
21 was not completed by the lessee in accordance
22 with the requirements; and

23 “(B) the amount of the dollar value of
24 such work that was not completed, reduced by
25 the amount of expenditures made for work com-



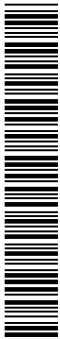
1 pleted in a prior year that is carried forward
2 pursuant to subsection (b)(2)(D).

3 “(d) PAYMENT OF VALUE OF UNCOMPLETED
4 WORK.—

5 “(1) IN GENERAL.—If the Secretary notifies a
6 lessee that the lessee failed to satisfy work commit-
7 ment requirements under subsection (b), the lessee
8 shall pay to the Secretary, by not later than the end
9 of the 60-day period beginning on the date of the
10 notification, the dollar value of work that was not
11 completed by the lessee, in the amount stated in the
12 notification (as reduced under subsection (c)(3)(B)).

13 “(2) FAILURE TO PAY VALUE OF
14 UNCOMPLETED WORK.—If a lessee fails to pay such
15 amount to the Secretary before the end of that pe-
16 riod, the lease shall terminate upon the expiration of
17 the period.

18 “(e) CONTINUATION AFTER COMMERCIAL PRODUC-
19 TION OR UTILIZATION.—If geothermal steam is produced
20 or utilized in commercial quantities within the primary
21 term of the lease under subsection (a) (including any ex-
22 tension of the lease under subsection (a)), such lease shall
23 continue until the date on which geothermal steam is no
24 longer produced or utilized in commercial quantities.



1 “(f) CONVERSION OF GEOTHERMAL LEASE TO MIN-
2 ERAL LEASE.—The lessee under a lease that has produced
3 geothermal steam for electrical generation, has been deter-
4 mined by the Secretary to be incapable of any further com-
5 mercial production or utilization of geothermal steam, and
6 that is producing any valuable byproduct in payable quan-
7 tities may, within 6 months after such determination—

8 “(1) convert the lease to a mineral lease under
9 the Mineral Leasing Act (30 U.S.C. 181 et seq.) or
10 under the Mineral Leasing Act for Acquired Lands
11 (30 U.S.C. 351 et seq.), if the lands that are subject
12 to the lease can be leased under that Act for the
13 production of such byproduct; or

14 “(2) convert the lease to a mining claim under
15 the general mining laws, if the byproduct is a
16 locatable mineral.”.

17 **SEC. 224. ADVANCED ROYALTIES REQUIRED FOR SUSPEN-**
18 **SION OF PRODUCTION.**

19 Section 5 of the Geothermal Steam Act of 1970 (30
20 U.S.C. 1004) is further amended by adding at the end
21 the following:

22 “(f) ADVANCED ROYALTIES REQUIRED FOR SUSPEN-
23 SION OF PRODUCTION.—

24 “(1) CONTINUATION OF LEASE FOLLOWING
25 CESSATION OF PRODUCTION.—If, at any time after



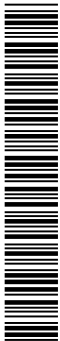
1 commercial production under a lease is achieved,
2 production ceases for any cause the lease shall re-
3 main in full force and effect—

4 “(A) during the 1-year period beginning on
5 the date production ceases; and

6 “(B) after such period if, and so long as,
7 the lessee commences and continues diligently
8 and in good faith until such production is re-
9 sumed the steps, operations, or procedures nec-
10 essary to cause a resumption of such produc-
11 tion.

12 “(2) If production of heat or energy under a
13 geothermal lease is suspended after the date of any
14 such production for which royalty is required under
15 subsection (a) and the terms of paragraph (1) are
16 not met, the Secretary shall require the lessee, until
17 the end of such suspension, to pay royalty in ad-
18 vance at the monthly pro-rata rate of the average
19 annual rate at which such royalty was paid each
20 year in the 5-year-period preceding the date of sus-
21 pension.

22 “(3) Paragraph (2) shall not apply if the sus-
23 pension is required or otherwise caused by the Sec-
24 retary, the Secretary of a military department, a
25 State or local government, or a force majeure.”.



1 **SEC. 225. ANNUAL RENTAL.**

2 (a) ANNUAL RENTAL RATE.—Section 5 of the Geo-
3 thermal Steam Act of 1970 (30 U.S.C. 1004) is further
4 amended in subsection (a) in paragraph (3) by striking
5 “\$1 per acre or fraction thereof for each year of the lease”
6 and all that follows through the end of the paragraph and
7 inserting “\$1 per acre or fraction thereof for each year
8 of the lease through the tenth year in the case of a lease
9 awarded in a noncompetitive lease sale; or \$2 per acre or
10 fraction thereof for the first year, \$3 per acre or fraction
11 thereof for each of the second through tenth years, in the
12 case of a lease awarded in a competitive lease sale; and
13 \$5 per acre or fraction thereof for each year after the 10th
14 year thereof for all leases.”.

15 (b) TERMINATION OF LEASE FOR FAILURE TO PAY
16 RENTAL.—Section 5 of the Geothermal Steam Act of
17 1970 (30 U.S.C. 1004) is further amended by adding at
18 the end the following:

19 “(g) TERMINATION OF LEASE FOR FAILURE TO PAY
20 RENTAL.—

21 “(1) IN GENERAL.—The Secretary shall termi-
22 nate any lease with respect to which rental is not
23 paid in accordance with this Act and the terms of
24 the lease under which the rental is required, upon
25 the expiration of the 45-day period beginning on the
26 date of the failure to pay such rental.



1 “(2) NOTIFICATION.—The Secretary shall
2 promptly notify a lessee that has not paid rental re-
3 quired under the lease that the lease will be termi-
4 nated at the end of the period referred to in para-
5 graph (1).

6 “(3) REINSTATEMENT.—A lease that would
7 otherwise terminate under paragraph (1) shall not
8 terminate under that paragraph if the lessee pays to
9 the Secretary, before the end of the period referred
10 to in paragraph (1), the amount of rental due plus
11 a late fee equal to 10 percent of such amount.”.

12 **SEC. 226. LEASING AND PERMITTING ON FEDERAL LANDS**
13 **WITHDRAWN FOR MILITARY PURPOSES.**

14 Not later than 2 years after the date of enactment
15 of this Act, the Secretary of the Interior and the Secretary
16 of Defense, in consultation with each military service and
17 with interested States, counties, representatives of the
18 geothermal industry, and other persons, shall submit to
19 Congress a joint report concerning leasing and permitting
20 activities for geothermal energy on Federal lands with-
21 drawn for military purposes. Such report shall include the
22 following:

23 (1) A description of the Military Geothermal
24 Program, including any differences between it and
25 the non-Military Geothermal Program, including re-

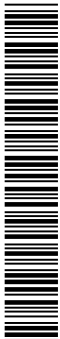


1 quired security procedures, and operational consider-
2 ations, and discussions as to the differences, and
3 why they are important. Further, the report shall
4 describe revenues or energy provided to the Depart-
5 ment of Defense and its facilities, royalty structures,
6 where applicable, and any revenue sharing with
7 States and counties or other benefits between—

8 (A) the implementation of the Geothermal
9 Steam Act of 1970 (30 U.S.C 1001 et seq.) and
10 other applicable Federal law by the Secretary of
11 the Interior; and

12 (B) the administration of geothermal leas-
13 ing under section 2689 of title 10, United
14 States Code, by the Secretary of Defense.

15 (2) If appropriate, a description of the current
16 methods and procedures used to ensure interagency
17 coordination, where needed, in developing renewable
18 energy sources on Federal lands withdrawn for mili-
19 tary purposes, and an identification of any new pro-
20 cedures that might be required in the future for the
21 improvement of interagency coordination to ensure
22 efficient processing and administration of leases or
23 contracts for geothermal energy on Federal lands
24 withdrawn for military purposes, consistent with the
25 defense purposes of such withdrawals.



1 (3) Recommendations for any legislative or ad-
2 ministrative actions that might better achieve in-
3 creased geothermal production, including a common
4 royalty structure, leasing procedures, or other
5 changes that increase production, offset military op-
6 eration costs, or enhance the Federal agencies' abil-
7 ity to develop geothermal resources.

8 Except as provided in this section, nothing in this subtitle
9 shall affect the legal status of the Department of the Inte-
10 rior and the Department of the Defense with respect to
11 each other regarding geothermal leasing and development
12 until such status is changed by law.

13 **SEC. 227. TECHNICAL AMENDMENTS.**

14 The Geothermal Steam Act of 1970 (30 U.S.C. 1001
15 et seq.) is further amended as follows:

16 (1) By striking “geothermal steam and associ-
17 ated geothermal resources” each place it appears
18 and inserting “geothermal resources”.

19 (2) Section 2(e) (30 U.S.C. 1001(e)) is amend-
20 ed to read as follows:

21 “(e) ‘direct use’ means utilization of geothermal
22 resources for commercial, residential, agricultural,
23 public facilities, or other energy needs other than the
24 commercial production of electricity; and”.



1 (3) Section 21 (30 U.S.C. 1020) is amended by
2 striking “(a) Within one hundred” and all that fol-
3 lows through “(b) Geothermal” and inserting “Geo-
4 thermal”.

5 (4) The first section (30 U.S.C. 1001 note) is
6 amended by striking “That this” and inserting the
7 following:

8 **“SEC. 1. SHORT TITLE.**

9 “‘This”.

10 (5) Section 2 (30 U.S.C. 1001) is amended by
11 striking “SEC. 2. As” and inserting the following:

12 **“SEC. 2. DEFINITIONS.**

13 “‘As”.

14 (6) Section 3 (30 U.S.C. 1002) is amended by
15 striking “SEC. 3. Subject” and inserting the fol-
16 lowing:

17 **“SEC. 3 . LANDS SUBJECT TO GEOTHERMAL LEASING.**

18 “‘Subject”.

19 (7) Section 5 (30 U.S.C. 1004) is further
20 amended by striking “SEC. 5.”, and by inserting im-
21 mediately before and above subsection (a) the fol-
22 lowing:



1 **“SEC. 5. RENTS AND ROYALTIES.”**

2 (8) Section 7 (30 U.S.C. 1006) is amended by
3 striking “SEC. 7. A geothermal” and inserting the
4 following:

5 **“SEC. 7. ACREAGE OF GEOTHERMAL LEASE.**

6 “A geothermal”.

7 (9) Section 8 (30 U.S.C. 1007) is amended by
8 striking “SEC. 8. (a) The” and inserting the fol-
9 lowing:

10 **“SEC. 8. READJUSTMENT OF LEASE TERMS AND CONDI-**
11 **TIONS.**

12 “(a) The”.

13 (10) Section 9 (30 U.S.C. 1008) is amended by
14 striking “SEC. 9. If” and inserting the following:

15 **“SEC. 9. BYPRODUCTS.**

16 “If”.

17 (11) Section 10 (30 U.S.C. 1009) is amended
18 by striking “SEC. 10. The” and inserting the fol-
19 lowing:

20 **“SEC. 10. RELINQUISHMENT OF GEOTHERMAL RIGHTS.**

21 “The”.

22 (12) Section 11 (30 U.S.C. 1010) is amended
23 by striking “SEC. 11. The” and inserting the fol-
24 lowing:

25 **“SEC. 11. SUSPENSION OF OPERATIONS AND PRODUCTION.**

26 “The”.



1 (13) Section 12 (30 U.S.C. 1011) is amended
2 by striking “SEC. 12. Leases” and inserting the fol-
3 lowing:

4 **“SEC. 12. TERMINATION OF LEASES.**

5 “Leases”.

6 (14) Section 13 (30 U.S.C. 1012) is amended
7 by striking “SEC. 13. The” and inserting the fol-
8 lowing:

9 **“SEC. 13. WAIVER, SUSPENSION, OR REDUCTION OF RENT-**
10 **AL OR ROYALTY.**

11 “The”.

12 (15) Section 14 (30 U.S.C. 1013) is amended
13 by striking “SEC. 14. Subject” and inserting the fol-
14 lowing:

15 **“SEC. 14. SURFACE LAND USE.**

16 “Subject”.

17 (16) Section 15 (30 U.S.C. 1014) is amended
18 by striking “SEC. 15. (a) Geothermal” and inserting
19 the following:

20 **“SEC. 15. LANDS SUBJECT TO GEOTHERMAL LEASING.**

21 “(a) Geothermal”.

22 (17) Section 16 (30 U.S.C. 1015) is amended
23 by striking “SEC. 16. Leases” and inserting the fol-
24 lowing:



1 **“SEC. 16. REQUIREMENT FOR LESSEES.**

2 “Leases”.

3 (18) Section 17 (30 U.S.C. 1016) is amended
4 by striking “SEC. 17. Administration” and inserting
5 the following:

6 **“SEC. 17. ADMINISTRATION.**

7 “Administration”.

8 (19) Section 19 (30 U.S.C. 1018) is amended
9 by striking “SEC. 19. Upon” and inserting the fol-
10 lowing:

11 **“SEC. 19. DATA FROM FEDERAL AGENCIES.**

12 “Upon”.

13 (20) Section 21 (30 U.S.C. 1020) is further
14 amended by striking “SEC. 21.”, and by inserting
15 immediately before and above the remainder of that
16 section the following:

17 **“SEC. 21. PUBLICATION IN FEDERAL REGISTER; RESERVA-**
18 **TION OF MINERAL RIGHTS.”.**

19 (21) Section 22 (30 U.S.C. 1021) is amended
20 by striking “SEC. 22. Nothing” and inserting the
21 following:

22 **“SEC. 22. FEDERAL EXEMPTION FROM STATE WATER LAWS.**

23 “Nothing”.

24 (22) Section 23 (30 U.S.C. 1022) is amended
25 by striking “SEC. 23. (a) All” and inserting the fol-
26 lowing:



1 **“SEC. 23. PREVENTION OF WASTE; EXCLUSIVITY.**

2 “(a) All”.

3 (23) Section 24 (30 U.S.C. 1023) is amended
4 by striking “SEC. 24. The” and inserting the fol-
5 lowing:

6 **“SEC. 24. RULES AND REGULATIONS.**

7 “The”.

8 (24) Section 25 (30 U.S.C. 1024) is amended
9 by striking “SEC. 25. As” and inserting the fol-
10 lowing:

11 **“SEC. 25. INCLUSION OF GEOTHERMAL LEASING UNDER**
12 **CERTAIN OTHER LAWS.**

13 “As”.

14 (25) Section 26 is amended by striking “SEC.
15 26. The” and inserting the following:

16 **“SEC. 26. AMENDMENT.**

17 “The”.

18 (26) Section 27 (30 U.S.C. 1025) is amended
19 by striking “SEC. 27. The” and inserting the fol-
20 lowing:

21 **“SEC. 27. FEDERAL RESERVATION OF CERTAIN MINERAL**
22 **RIGHTS.**

23 “The”.

24 (27) Section 28 (30 U.S.C. 1026) is amended
25 by striking “SEC. 28. (a)(1) The” and inserting the
26 following:



1 **“SEC. 28. SIGNIFICANT THERMAL FEATURES.**

2 “(a)(1) The”.

3 (28) Section 29 (30 U.S.C. 1027) is amended
4 by striking “SEC. 29. The” and inserting the fol-
5 lowing:

6 **“SEC. 29. LAND SUBJECT TO PROHIBITION ON LEASING.**

7 “The”.

8 **Subtitle C—Hydroelectric**

9 **PART I—ALTERNATIVE CONDITIONS**

10 **SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.**

11 (a) FEDERAL RESERVATIONS.—Section 4(e) of the
12 Federal Power Act (16 U.S.C. 797(e)) is amended by in-
13 serting after “adequate protection and utilization of such
14 reservation.” at the end of the first proviso the following:
15 “The license applicant shall be entitled to a determination
16 on the record, after opportunity for an expedited agency
17 trial-type hearing of any disputed issues of material fact,
18 with respect to such conditions. Such hearing may be con-
19 ducted in accordance with procedures established by agen-
20 cy regulation in consultation with the Federal Energy
21 Regulatory Commission.”.

22 (b) FISHWAYS.—Section 18 of the Federal Power Act
23 (16 U.S.C. 811) is amended by inserting after “and such
24 fishways as may be prescribed by the Secretary of Com-
25 merce.” the following: “The license applicant shall be enti-
26 tled to a determination on the record, after opportunity



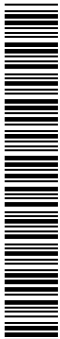
1 for an expedited agency trial-type hearing of any disputed
2 issues of material fact, with respect to such fishways. Such
3 hearing may be conducted in accordance with procedures
4 established by agency regulation in consultation with the
5 Federal Energy Regulatory Commission.”.

6 (c) ALTERNATIVE CONDITIONS AND PRESCRIP-
7 TIONS.—Part I of the Federal Power Act (16 U.S.C. 791a
8 et seq.) is amended by adding the following new section
9 at the end thereof:

10 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

11 “(a) ALTERNATIVE CONDITIONS.—(1) Whenever any
12 person applies for a license for any project works within
13 any reservation of the United States, and the Secretary
14 of the department under whose supervision such reserva-
15 tion falls (referred to in this subsection as ‘the Secretary’)
16 deems a condition to such license to be necessary under
17 the first proviso of section 4(e), the license applicant may
18 propose an alternative condition.

19 “(2) Notwithstanding the first proviso of section 4(e),
20 the Secretary shall accept the proposed alternative condi-
21 tion referred to in paragraph (1), and the Commission
22 shall include in the license such alternative condition, if
23 the Secretary determines, based on substantial evidence
24 provided by the license applicant or otherwise available to
25 the Secretary, that such alternative condition—



1 “(A) provides for the adequate protection and
2 utilization of the reservation; and

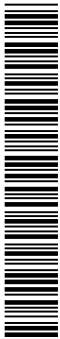
3 “(B) will either—

4 “(i) cost less to implement; or

5 “(ii) result in improved operation of the
6 project works for electricity production,

7 as compared to the condition initially deemed nec-
8 essary by the Secretary.

9 “(3) The Secretary shall submit into the public
10 record of the Commission proceeding with any condition
11 under section 4(e) or alternative condition it accepts under
12 this section, a written statement explaining the basis for
13 such condition, and reason for not accepting any alter-
14 native condition under this section. The written statement
15 must demonstrate that the Secretary gave equal consider-
16 ation to the effects of the condition adopted and alter-
17 natives not accepted on energy supply, distribution, cost,
18 and use; flood control; navigation; water supply; and air
19 quality (in addition to the preservation of other aspects
20 of environmental quality); based on such information as
21 may be available to the Secretary, including information
22 voluntarily provided in a timely manner by the applicant
23 and others. The Secretary shall also submit, together with
24 the aforementioned written statement, all studies, data,



1 and other factual information available to the Secretary
2 and relevant to the Secretary's decision.

3 “(4) Nothing in this section shall prohibit other inter-
4 ested parties from proposing alternative conditions.

5 “(5) If the Secretary does not accept an applicant's
6 alternative condition under this section, and the Commis-
7 sion finds that the Secretary's condition would be incon-
8 sistent with the purposes of this part, or other applicable
9 law, the Commission may refer the dispute to the Commis-
10 sion's Dispute Resolution Service. The Dispute Resolution
11 Service shall consult with the Secretary and the Commis-
12 sion and issue a non-binding advisory within 90 days. The
13 Secretary may accept the Dispute Resolution Service advi-
14 sory unless the Secretary finds that the recommendation
15 will not provide for the adequate protection and utilization
16 of the reservation. The Secretary shall submit the advisory
17 and the Secretary's final written determination into the
18 record of the Commission's proceeding.

19 “(b) ALTERNATIVE PRESCRIPTIONS.—(1) Whenever
20 the Secretary of the Interior or the Secretary of Commerce
21 prescribes a fishway under section 18, the license appli-
22 cant or licensee may propose an alternative to such pre-
23 scription to construct, maintain, or operate a fishway.

24 “(2) Notwithstanding section 18, the Secretary of the
25 Interior or the Secretary of Commerce, as appropriate,



1 shall accept and prescribe, and the Commission shall re-
2 quire, the proposed alternative referred to in paragraph
3 (1), if the Secretary of the appropriate department deter-
4 mines, based on substantial evidence provided by the li-
5 censee or otherwise available to the Secretary, that such
6 alternative—

7 “(A) will be no less protective than the fishway
8 initially prescribed by the Secretary; and

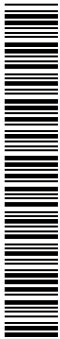
9 “(B) will either—

10 “(i) cost less to implement; or

11 “(ii) result in improved operation of the
12 project works for electricity production,

13 as compared to the fishway initially deemed nec-
14 essary by the Secretary.

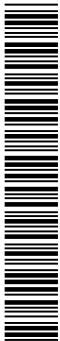
15 “(3) The Secretary concerned shall submit into the
16 public record of the Commission proceeding with any pre-
17 scription under section 18 or alternative prescription it ac-
18 cepts under this section, a written statement explaining
19 the basis for such prescription, and reason for not accept-
20 ing any alternative prescription under this section. The
21 written statement must demonstrate that the Secretary
22 gave equal consideration to the effects of the condition
23 adopted and alternatives not accepted on energy supply,
24 distribution, cost, and use; flood control; navigation; water
25 supply; and air quality (in addition to the preservation of



1 other aspects of environmental quality); based on such in-
2 formation as may be available to the Secretary, including
3 information voluntarily provided in a timely manner by the
4 applicant and others. The Secretary shall also submit, to-
5 gether with the aforementioned written statement, all
6 studies, data, and other factual information available to
7 the Secretary and relevant to the Secretary's decision.

8 “(4) Nothing in this section shall prohibit other inter-
9 ested parties from proposing alternative prescriptions.

10 “(5) If the Secretary concerned does not accept an
11 applicant's alternative prescription under this section, and
12 the Commission finds that the Secretary's prescription
13 would be inconsistent with the purposes of this part, or
14 other applicable law, the Commission may refer the dis-
15 pute to the Commission's Dispute Resolution Service. The
16 Dispute Resolution Service shall consult with the Sec-
17 retary and the Commission and issue a non-binding advi-
18 sory within 90 days. The Secretary may accept the Dis-
19 pute Resolution Service advisory unless the Secretary
20 finds that the recommendation will be less protective than
21 the fishway initially prescribed by the Secretary. The Sec-
22 retary shall submit the advisory and the Secretary's final
23 written determination into the record of the Commission's
24 proceeding.”.



1 **PART II—ADDITIONAL HYDROPOWER**

2 **SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.**

3 (a) INCENTIVE PAYMENTS.—For electric energy gen-
4 erated and sold by a qualified hydroelectric facility during
5 the incentive period, the Secretary of Energy (referred to
6 in this section as the “Secretary”) shall make, subject to
7 the availability of appropriations, incentive payments to
8 the owner or operator of such facility. The amount of such
9 payment made to any such owner or operator shall be as
10 determined under subsection (e) of this section. Payments
11 under this section may only be made upon receipt by the
12 Secretary of an incentive payment application which estab-
13 lishes that the applicant is eligible to receive such payment
14 and which satisfies such other requirements as the Sec-
15 retary deems necessary. Such application shall be in such
16 form, and shall be submitted at such time, as the Sec-
17 retary shall establish.

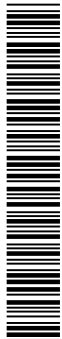
18 (b) DEFINITIONS.—For purposes of this section:

19 (1) QUALIFIED HYDROELECTRIC FACILITY.—

20 The term “qualified hydroelectric facility” means a
21 turbine or other generating device owned or solely
22 operated by a non-Federal entity which generates
23 hydroelectric energy for sale and which is added to
24 an existing dam or conduit.

25 (2) EXISTING DAM OR CONDUIT.—The term

26 “existing dam or conduit” means any dam or con-



1 duit the construction of which was completed before
2 the date of the enactment of this section and which
3 does not require any construction or enlargement of
4 impoundment or diversion structures (other than re-
5 pair or reconstruction) in connection with the instal-
6 lation of a turbine or other generating device.

7 (3) CONDUIT.—The term “conduit” has the
8 same meaning as when used in section 30(a)(2) of
9 the Federal Power Act (16 U.S.C. 823a(a)(2)).

10 The terms defined in this subsection shall apply without
11 regard to the hydroelectric kilowatt capacity of the facility
12 concerned, without regard to whether the facility uses a
13 dam owned by a governmental or nongovernmental entity,
14 and without regard to whether the facility begins oper-
15 ation on or after the date of the enactment of this section.

16 (c) ELIGIBILITY WINDOW.—Payments may be made
17 under this section only for electric energy generated from
18 a qualified hydroelectric facility which begins operation
19 during the period of 10 fiscal years beginning with the
20 first full fiscal year occurring after the date of enactment
21 of this subtitle.

22 (d) INCENTIVE PERIOD.—A qualified hydroelectric
23 facility may receive payments under this section for a pe-
24 riod of 10 fiscal years (referred to in this section as the
25 “incentive period”). Such period shall begin with the fiscal



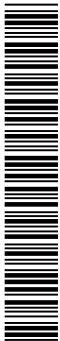
1 year in which electric energy generated from the facility
2 is first eligible for such payments.

3 (e) AMOUNT OF PAYMENT.—

4 (1) IN GENERAL.—Payments made by the Sec-
5 retary under this section to the owner or operator of
6 a qualified hydroelectric facility shall be based on
7 the number of kilowatt hours of hydroelectric energy
8 generated by the facility during the incentive period.
9 For any such facility, the amount of such payment
10 shall be 1.8 cents per kilowatt hour (adjusted as
11 provided in paragraph (2)), subject to the avail-
12 ability of appropriations under subsection (g), except
13 that no facility may receive more than \$750,000 in
14 1 calendar year.

15 (2) ADJUSTMENTS.—The amount of the pay-
16 ment made to any person under this section as pro-
17 vided in paragraph (1) shall be adjusted for inflation
18 for each fiscal year beginning after calendar year
19 2005 in the same manner as provided in the provi-
20 sions of section 29(d)(2)(B) of the Internal Revenue
21 Code of 1986, except that in applying such provi-
22 sions the calendar year 2005 shall be substituted for
23 calendar year 1979.

24 (f) SUNSET.—No payment may be made under this
25 section to any qualified hydroelectric facility after the ex-



1 piration of the period of 20 fiscal years beginning with
2 the first full fiscal year occurring after the date of enact-
3 ment of this subtitle, and no payment may be made under
4 this section to any such facility after a payment has been
5 made with respect to such facility for a period of 10 fiscal
6 years.

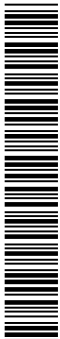
7 (g) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary to carry
9 out the purposes of this section \$10,000,000 for each of
10 the fiscal years 2006 through 2015.

11 **SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

12 (a) INCENTIVE PAYMENTS.—The Secretary of En-
13 ergy shall make incentive payments to the owners or oper-
14 ators of hydroelectric facilities at existing dams to be used
15 to make capital improvements in the facilities that are di-
16 rectly related to improving the efficiency of such facilities
17 by at least 3 percent.

18 (b) LIMITATIONS.—Incentive payments under this
19 section shall not exceed 10 percent of the costs of the cap-
20 ital improvement concerned and not more than 1 payment
21 may be made with respect to improvements at a single
22 facility. No payment in excess of \$750,000 may be made
23 with respect to improvements at a single facility.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to carry out this section



1 not more than \$10,000,000 for each of the fiscal years
2 2006 through 2015.

3 **SEC. 243. SMALL HYDROELECTRIC POWER PROJECTS.**

4 Section 408(a)(6) of the Public Utility Regulatory
5 Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended
6 by striking “April 20, 1977” and inserting “March 4,
7 2003”.

8 **SEC. 244. INCREASED HYDROELECTRIC GENERATION AT**
9 **EXISTING FEDERAL FACILITIES.**

10 (a) IN GENERAL.—The Secretary of the Interior and
11 the Secretary of Energy, in consultation with the Sec-
12 retary of the Army, shall jointly conduct a study of the
13 potential for increasing electric power production capa-
14 bility at federally owned or operated water regulation,
15 storage, and conveyance facilities.

16 (b) CONTENT.—The study under this section shall in-
17 clude identification and description in detail of each facil-
18 ity that is capable, with or without modification, of pro-
19 ducing additional hydroelectric power, including esti-
20 mation of the existing potential for the facility to generate
21 hydroelectric power.

22 (c) REPORT.—The Secretaries shall submit to the
23 Committees on Energy and Commerce, Resources, and
24 Transportation and Infrastructure of the House of Rep-
25 resentatives and the Committee on Energy and Natural



1 Resources of the Senate a report on the findings, conclu-
2 sions, and recommendations of the study under this sec-
3 tion by not later than 18 months after the date of the
4 enactment of this Act. The report shall include each of
5 the following:

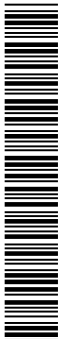
6 (1) The identifications, descriptions, and esti-
7 mations referred to in subsection (b).

8 (2) A description of activities currently con-
9 ducted or considered, or that could be considered, to
10 produce additional hydroelectric power from each
11 identified facility.

12 (3) A summary of prior actions taken by the
13 Secretaries to produce additional hydroelectric power
14 from each identified facility.

15 (4) The costs to install, upgrade, or modify
16 equipment or take other actions to produce addi-
17 tional hydroelectric power from each identified facil-
18 ity and the level of Federal power customer involve-
19 ment in the determination of such costs.

20 (5) The benefits that would be achieved by such
21 installation, upgrade, modification, or other action,
22 including quantified estimates of any additional en-
23 ergy or capacity from each facility identified under
24 subsection (b).



1 (6) A description of actions that are planned,
2 underway, or might reasonably be considered to in-
3 crease hydroelectric power production by replacing
4 turbine runners, by performing generator upgrades
5 or rewinds, or construction of pumped storage facili-
6 ties.

7 (7) The impact of increased hydroelectric power
8 production on irrigation, fish, wildlife, Indian tribes,
9 river health, water quality, navigation, recreation,
10 fishing, and flood control.

11 (8) Any additional recommendations to increase
12 hydroelectric power production from, and reduce
13 costs and improve efficiency at, federally owned or
14 operated water regulation, storage, and conveyance
15 facilities.

16 **SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**
17 **ODS.**

18 (a) IN GENERAL.—The Secretary of the Interior
19 shall—

20 (1) review electric power consumption by Bu-
21 reau of Reclamation facilities for water pumping
22 purposes; and

23 (2) make such adjustments in such pumping as
24 possible to minimize the amount of electric power
25 consumed for such pumping during periods of peak



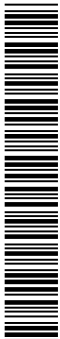
1 electric power consumption, including by performing
2 as much of such pumping as possible during off-
3 peak hours at night.

4 (b) CONSENT OF AFFECTED IRRIGATION CUSTOMERS
5 REQUIRED.—The Secretary may not under this section
6 make any adjustment in pumping at a facility without the
7 consent of each person that has contracted with the
8 United States for delivery of water from the facility for
9 use for irrigation and that would be affected by such ad-
10 justment.

11 (c) EXISTING OBLIGATIONS NOT AFFECTED.—This
12 section shall not be construed to affect any existing obliga-
13 tion of the Secretary to provide electric power, water, or
14 other benefits from Bureau of Reclamation facilities, in-
15 cluding recreational releases.

16 **SEC. 246. CORPS OF ENGINEERS HYDROPOWER OPERATION**
17 **AND MAINTENANCE FUNDING.**

18 (a) IN GENERAL.—Notwithstanding the last sentence
19 of section 5 of the Act of December 22, 1944 (commonly
20 known as the “Flood Control Act of 1944”) (58 Stat. 890,
21 chapter 665; 16 U.S.C. 825s), the 11th paragraph under
22 the heading “OFFICE OF THE SECRETARY” in title I of
23 the Act of October 12, 1949 (63 Stat. 767, chapter 680;
24 16 U.S.C. 825s–1), the matter under the heading “CON-
25 TINUING FUND, SOUTHEASTERN POWER ADMINISTRA-



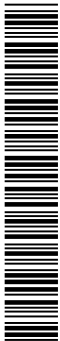
1 TION” in title I of the Act of August 31, 1951 (65 Stat.
2 249, chapter 375; 16 U.S.C. 825s–2), section 3302 of title
3 31, United States Code, or any other law, and without
4 further appropriation or fiscal year limitation, for fiscal
5 year 2006, the Administrator of the Southeastern Power
6 Administration, the Administrator of the Southwestern
7 Power Administration, and the Administrator of the West-
8 ern Area Power Administration may credit to the Sec-
9 retary of the Army (referred to in this section as the “Sec-
10 retary”), receipts, in an amount determined under sub-
11 section (c), from the sale of power and related services.

12 (b) USE OF FUNDS.—

13 (1) IN GENERAL.—The Secretary—

14 (A) shall, except as provided in paragraph
15 (2), use the amounts credited under subsection
16 (a) to fund only the Corps of Engineers annual
17 operation and maintenance activities that are
18 allocated exclusively to the power function and
19 assigned to the respective power marketing ad-
20 ministration and respective project system as
21 applicable for repayment; and

22 (B) shall not use the amounts for any
23 costs allocated to non-power functions of Corps
24 of Engineer operations.



1 (2) EXCEPTION.—The Secretary may use
2 amounts credited by the Southwestern Power Ad-
3 ministration under subsection (a) for capital and
4 nonrecurring costs.

5 (c) AMOUNT.—The amount of the receipts credited
6 under subsection (a) shall be equal to such amount as—

7 (1) the Secretary of the Army requests; and

8 (2) the appropriate Administrator, in consulta-
9 tion with the power customers of the Administrator’s
10 power marketing administration, determines to be
11 appropriate to apply to the costs referred to in sub-
12 section (b).

13 (d) APPLICABLE LAW.—The amounts credited under
14 subsection (a) are exempt from sequestration under the
15 Balanced Budget and Emergency Deficit Control Act of
16 1985 (2 U.S.C. 901 et seq.).

17 **SEC. 247. LIMITATION ON CERTAIN CHARGES ASSESSED TO**
18 **THE FLINT CREEK PROJECT, MONTANA.**

19 Notwithstanding section 10(e)(1) of the Federal
20 Power Act (16 U.S.C. 803(e)(1)) or any other provision
21 of Federal law providing for the payment to the United
22 States of charges for the use of Federal land for the pur-
23 poses of operating and maintaining a hydroelectric devel-
24 opment licensed by the Federal Energy Regulatory Com-
25 mission (referred to in this section as the “Commission”),



1 any political subdivision of the State of Montana that
2 holds a license for Commission Project No. 1473 in Gran-
3 ite and Deer Lodge Counties, Montana, shall be required
4 to pay to the United States for the use of that land for
5 each year during which the political subdivision continues
6 to hold the license for the project, the lesser of—

7 (1) \$25,000; or

8 (2) such annual charge as the Commission or
9 any other department or agency of the Federal Gov-
10 ernment may assess.

11 **SEC. 248. REINSTATEMENT AND TRANSFER.**

12 (a) REINSTATEMENT AND TRANSFER OF FEDERAL
13 LICENSE FOR PROJECT NUMBERED 2696.—Notwith-
14 standing section 8 of the Federal Power Act (16 U.S.C.
15 801) or any other provision of such Act, the Federal En-
16 ergy Regulatory Commission shall reinstate the license for
17 Project No. 2696 and transfer the license, without delay
18 or the institution of any proceedings, to the Town of
19 Stuyvesant, New York, holder of Federal Energy Regu-
20 latory Commission Preliminary Permit No. 11787, within
21 30 days after the date of enactment of this Act.

22 (b) HYDROELECTRIC INCENTIVES.—Project No.
23 2696 shall be entitled to the full benefit of any Federal
24 legislation that promotes hydroelectric development that



1 is enacted within 2 years either before or after the date
2 of enactment of this Act.

3 (c) PROJECT DEVELOPMENT AND FINANCING.—The
4 Federal Energy Regulatory Commission shall permit the
5 Town of Stuyvesant to add as a colicensee any private or
6 public entity or entities to the reinstated license at any
7 time, notwithstanding the issuance of a preliminary permit
8 to the Town of Stuyvesant and any consideration of mu-
9 nicipal preference. The town shall be entitled, to the extent
10 that funds are available or shall be made available, to re-
11 ceive loans under sections 402 and 403 of the Public Util-
12 ity Regulatory Policies Act of 1978 (16 U.S.C. 2702 and
13 2703), or similar programs, for the reimbursement of fea-
14 sibility studies or development costs, or both, incurred
15 since January 1, 2001, through and including December
16 31, 2006. All power produced by the project shall be
17 deemed incremental hydropower for purpose of qualifying
18 for any energy credit or similar benefits.

